IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION. 8136 OF 2005

Javed Jamir Khan .... Applicant

versus

The State of Maharashtra & ors. ... Respondents.

Shri Vikas Shivarkar for the appellant.

Ms. S.D. Shinde APP for State.

CORAM; V.M. KANADE, J.

DATED; JANUARY 27, 2006.

P.C:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This is an application for bail filed by the applicant, who was arrested in connection with an offence which was registered on 30-8-2004 by the Khadak police station, Pune City vide C.R.No. 3221 of 2004 for the offences punishable under section 3 (1)(i)(2) of Maharashtra Control of Organized Crimes Act, 1999. The charge sheet has been filed by the police after the investigation was completed, and after obtaining necessary approval as contemplated under section 23 (2) of the said Act.

3. It is alleged that the applicant along with others committed various crimes as a members of the crime syndicate continuously and therefore the applicant along with others had committed an offence punishable under section 3(1)(i)(2) of the MCOC Act. It is submitted by the learned counsel appearing on behalf of the applicant that only two offences have been registered against the present applicant, one in C.R.No. 43/2003 for offences punishable under sections 143, 147, 1478, 149, 323, 504, 427, 336 of IPC read with provisions of the Arms Act and Bombay Police Act and secondly in C.R.No. 209 of 2003 for identical offences and for offences punishable under sections 307, 504 and 452 of IPC along with provisions of the Arms Act and Bombay Police Act. It is submitted that the provisions of MCOC Act cannot be made applicable so far as the present applicant is concerned as there is no evidence to show that he is a member of the organised crime syndicate. It is further submitted that the applicant has not committed any crime as the member of the organised crime syndicate continuously and all the offences which was mentioned in the FIR have been committed by the other two persons and as such there is no nexus between the crime committed by the present applicant and other two accused persons. It is further submitted that so far as the present applicant is concerned, only one offence is mentioned

against him and so far as the other offences are concerned, no cognizance has been taken by the Magistrate and therefore the applicant cannot be termed as a person who is continuously committing unlawful act as a member of organised crime. It is further submitted that even in respect of offences, which is registered against him vide C.R.No. 295 of 1996, there is no documentary or other evidence on record against the present applicant is concerned or in any way remotely concerned with the said offence. In support of the said submission the learned counsel relied on the judgment of this court reported in the case of **Sidharth Ramesh Janmejay Vs. State of Maharashtra reported in 2005 ALL MR (Cri) page 460 as also the case of Ranjitsingh Sharma Vs. State of Maharashtra reported in 2005 ALL MR (Cri) page 1538 (S.C.).** He also relied on the Division Bench judgment of this court in the case of **Bharat Shantilal Shah Vs. State of Maharashtra reported in 2003 ALL MR (Cri) page 1061** and one more judgment of this court in the case of **Deepak Dhondiba Misal Vs. The State of Maharashtra in Criminal Application No.4400 of 2004 decided on 11-02-2005.**

4. The learned APP for the State has submitted that the ratio of the said judgment cannot be made applicable to the facts of the present case. He also

submitted that the applicant had committed various acts as a member of the organised crime syndicate and as such the provisions of MCOC Act are clearly applicable to the facts of the present case. He further submitted that the proper sanction and permission to investigation has been obtained under the provisions of section 23 of the said Act.

5. A perusal of the charge sheet clearly indicates that the applicant along with others are involved in large number of cases of extortion and committed murder and various other acts. A perusal of the order passed by the office of the Additional Police Commissioner, Pune, dated 28-2-2004 clearly indicates that after the Additional Police Commissioner had perused the report and the documents, which was submitted before him, he was satisfied that the provisions of MCOC Act should be made applicable to the applicant and two others and accordingly permission to investigate was granted under the provisions of the said Act. After the proposal was submitted to the Additional Director General of Police and the Commissioner of Police, Pune, sanction under section 23(2) of MCOC Act of 1999 was granted on 5-1-2005. The sanction which was granted indicates that there was sufficient evidence against the applicant. Submission of the learned counsel for the applicant that there are only two cases pending and

therefore the applicant cannot be termed as a person who is continuously carrying on unlawful activities, cannot be accepted as the relevant provisions of MCOC Act indicates that in order to make said provisions applicable, competent authority has to be satisfied that the person concerned has acted as a member of the organised crime syndicate and as a member of such organisation is continuously carrying on various unlawful activities. A perusal of the FIR indicates that more than 20 cases have been filed against the accused no.1 and 2 and the present applicant is also involved in all the cases. The submission of the learned counsel appearing on behalf of the applicant that cognizance has not been taken by the learned Magistrate in respect of other cases, does not appear to be correct as the order which is passed under section 23(1) and 23(2) clearly indicates that cognizance has been taken by the learned Magistrate and FIR has also indicated that these cases are pending in the court.

6. So far as the third submission of the learned counsel for the applicant is concerned, that there is no nexus between the various criminal acts which are committed by the other accused and the present applicant is concerned, that submission is also cannot be accepted. Though reliance was placed on the

judgment of the Supreme Court in case of Ranjitsingh Sharma's case, in my view, the ratio of the said judgment is not applicable to the facts of this case. In the present case, the applicant has been actively abetting and committing unlawful activity along with two other accused. The material clearly indicates that the accused no.1 appears to be a ring leader and accused nos.2 and 3 are members of the said organised crime. Though the applicant may not have committed the crime which have been committed by the accused no.1 in the year 1991-92. The material does indicate that the applicant is the member of an organised crime which has been continuously carrying on unlawful activities and therefore the competent authority ultimately thought it fit to apply the provisions of MCOC Act. The reliance which is placed by the learned counsel for the applicant on the various judgments will not be any assistance to the applicant as the ratio of the said judgment do not apply to the facts of the present case.

7. In the result, the application for bail is rejected. Trial however is expedited.

8. It is made clear that the trial court shall not be influenced by any observations made by this court while deciding this application and these observations may not be treated as expression of opinion on merits of the case.

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